

STATE HOUSE ANNEX, ROOM 208  
603-271-3658

September 15, 1977

The Honorable Robert W. Flanders  
Treasurer of the State of New Hampshire  
State House Annex  
Concord, New Hampshire 03301

Dear Mr. Flanders:

This is in response to your letter dated August 30, 1977 to Peter L. Cheney, Keene City Manager, which you referred to this office for comment. Mr. Cheney had written you concerning the distribution of revenue made to the cities and towns on July 15, 1977, pursuant to RSA 31-A.

Under RSA 31-A:5, II (Supp. 1975), distributions of a portion of the general revenue of the State made payable to cities and towns pursuant to RSA 31-A:1, are made to those cities and towns operating on a calendar year basis as follows: one half on July fifteenth, one quarter on September first, and one quarter on December first. In the case of cities or towns adopting fiscal years, payments are made in four equal installments, on March fifteenth, July fifteenth, September fifteenth, and December fifteenth. The total distribution for each year is established by RSA 31-A:4 (Supp. 1975) which provides:

The state treasurer shall determine the amount of revenue returnable to each city or town in each year subsequent to 1970 by increasing the amount returned to each city or town in the preceding year by five percent.

The distribution made to the cities and towns on July 15,

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1977 was one half of the amount returned during fiscal year 1977; it was calculated without regard to the five percent increase required by the terms of RSA 31-A:4 (Supp. 1975).

The precise issue raised by Mr. Cheney and in your August 30, 1977 letter is whether the terms of Chapter 1 of the Laws of the Special Session of 1977 required you to disregard the five percent increase mandated by the terms of RSA 31-A:4 (Supp. 1975) in calculating the amount of the July 15th distribution.

Although your inquiry specifically addresses the July 15th distribution to the City of Keene, we read your letter as also requesting our comments on subsequent distributions. After June 30, 1977 general authorization for the expenditure of state funds has been provided by one or the other of two so-called operating resolutions. The July 15th distribution was made during the time when the initial operating resolution was in effect. HJR 1, which became Chapter 1 of the Laws of the 1977 Special Session, was enacted on July 12, 1977, retroactive to July 1, and remained effective through July 19, 1977, after which it was followed by Chapter 2 of the Laws of the 1977 Special Session. All distributions made after July 19, 1977 must therefore be made with consideration of the provisions of Chapter 2. (For brevity, the two resolutions will be called below simply "Chapter 1" or "Chapter 2.")

Turning first to the provisions of RSA 31-A, we have noted above that its terms mandate a distribution of revenues to cities and towns, with the amount increasing five percent each year. Your authority and obligation to make distributions do not depend on the passage of biennial budget acts, since RSA 31-A:5, II (Supp. 1975) automatically appropriates funds for the distributions by this language:

There is hereby appropriated for each  
fiscal year a sum sufficient to make  
the payments provided for by this  
section.

1975 Laws 505, the budget act, appropriated specific sums for the purposes of the distributions, but those appropriations were not legally required. In the absence of a budget act or an operating resolution, then, your obligation and authority would have been clear, to make the distributions and to compute their amounts on the basis of a five percent annual increase.

So far as concerns language relevant to the question raised,

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the language of Chapter 1 and Chapter 2 is identical:

" . . . each state agency for which the  
general court appropriated funds . . .  
[in the most recent budget act] is  
authorized to obligate additional funds  
for expenditure during fiscal year 1978  
 . . . at a rate not in excess of that  
authorized for the same purposes . . .  
[by the most recent budget act appli-  
cable to fiscal year 1977] . . . ."

A few observations about this operating resolution language and its relation to RSA 31-A:5, II (Supp. 1975) are obvious. The operating resolutions do not expressly refer to RSA 31-A, and on no interpretation remove the rights of the cities and towns to the annual five percent increase. The language of the operating resolutions is broad enough to affect your power to obligate funds, and to make the obligated payments, during the time the operating resolutions are in effect, but the very generality of the language does not compel the conclusion that your power and obligation to make RSA 31-A payments are affected. In other words, if the present operating resolution, Chapter 2, expires on October 20 and no further legislative action is taken, the municipalities will be entitled to the five percent increase for the current year, but while Chapter 2 is in effect it may or may not prevent you from calculating and making your actual distributions based on the five percent increase. Our conclusion is that during the period of their effectiveness, the operating resolution language does preclude any payment by you under RSA 31-A in excess of payments made under the budget act for 1977; that is, you must disregard the five percent increase in calculating payments to be made during the effective period of the operating resolutions. We believe this conclusion is required by the following legislative history bearing on the language of the operating resolutions.

Legislative history with respect to Chapter 1 is silent on the question before us, but with respect to Chapter 2's identical language, Representative Tucker made the following explanation to the House of Representatives:

The purpose of a continuing resolution is to continue 1977 spending levels with a single exception, a seven percent raise for those who are paid by the state of New Hampshire. 2 1977 House Record 12.

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When specifically asked what effect the resolution would have on the reimbursement to the cities and towns, Representative Tucker stated:

There will be no increase in the reimbursement to cities and towns over whatever they are getting at the present time. Whatever is provided for in the 1977 budget will be the continuing rate of reimbursement. There will be no increase. Id.

Chapter 2, then in the form of SJR 1, was shortly thereafter passed by the House, and it is clear from the quoted statements by Representative Tucker that the intent was to limit payments to cities and towns. The intent was to include your department and your RSA 31-A payments within the ambit of "each state agency" which is "authorized to obligate additional funds" "at a rate not in excess of that authorized for the same purposes" in the operating budget for fiscal year 1977, as those quoted phrases are used in the operating resolutions. Given the fact that the same Legislature used the same language one week before in Chapter 1, we believe the most reasonable conclusion is that the Legislature intended that same language to have the same effect. Thus we conclude that during the effectiveness of each operating resolution, your power to make payments for purposes of RSA 31-A is limited to a power to pay at levels not in excess of those authorized under the last budget act, applicable to fiscal year 1977. To consider the five percent increase in making payments while these resolutions are in effect would be to defy the will of the Legislature which used language broad enough to accomplish what it clearly intended.

In making these observations we are not unmindful that there has been some talk of litigation against you to compel payments calculated with reference to the five percent increase. We think one further thought, therefore, is worth noting: if the Legislature takes no further action to reduce the payments required under RSA 31-A, after October 20 you will be authorized and obligated to make payments under that statute which do consider the five percent increase mandated by it. The operating resolutions simply restrict your power to consider the five percent increases in making payments during the periods when the operating resolutions apply. In the absence of further legislative action to the contrary, then, after October 20, 1977 you may properly pay to the cities and towns the difference between the payments as restricted under the operating resolutions and payments based on the five percent increase.

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I trust this information is responsive to your inquiry.  
If you have any further questions, please do not hesitate to  
contact this office.

Yours sincerely,

David H. Souter  
Attorney General

DHS/smg